

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Angelucci et al. Confirmation No.: 7696
Serial No.: 09/942,333 Art Unit: 3733
Filed: August 29, 2001 Examiner: Shaffer, Richard R.
For: LAMINOPLASTY IMPLANTS Attorney Docket No: 8932-546
AND METHODS OF USE

**PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION
UNDER 37 C.F.R. § 1.137(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir.

In response to the Notice of Abandonment mailed December 11, 2006, Applicants hereby file a Petition to Revive Unintentionally Abandoned Application under 37 C.F.R. § 1.137(b). The required reply is filed concurrently herewith, which consists of a Notice of Appeal, a Pre-Appeal Brief Request for Review, and a Pre-Appeal Brief Conference Request.

The delay in filing the required reply was unintentional, and to a large extent, unavoidable. A Final Rejection was mailed by the USPTO on May 4, 2006. Before the two-month date, Applicants filed an Amendment on June 28, 2006. This amendment was received by the USPTO (see Postcard stamped June 28, 2006, copy attached as Exhibit A), but apparently lost thereafter by the USPTO. As the six-month date neared, and Applicants still had not received a response from the USPTO, the undersigned phoned the Examiner on November 2, 2006 to inquire as to the status of the application. (See Interview Summary mailed November 13, 2006, copy attached as Exhibit B). The Examiner suggested that Applicants resubmit the previously-filed Amendment, which Applicants did on November 3, 2006 (still within the 6-month period). (See Resubmission of Amendment filed November 3, 2006 (with Postcard stamped November 3, 2006), copy attached as Exhibit C).

Applicants also spoke with Examiner Eduardo Robert regarding this matter, who confirmed that Applicants should resubmit the Amendment, but that the case would go abandoned if claims remained rejected. Examiner Robert stated this would be the case

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regardless of the USPTO's fault in failing to process Applicants' original timely-filed Amendment on June 28, 2006, and that there was nothing Applicants' could have done to avoid it.

After the 6-month period lapsed, Applicants received an Advisory Action mailed November 24, 2006 affirming the pending rejections of the claims. Thereafter, Applicants received a Notice of Abandonment mailed December 11, 2006.

Applicants therefore submit that but for the USPTO's error in failing to process Applicants' timely-filed Amendment, the instant application would not have gone abandoned in the first place. In that sense abandonment was unavoidable, and certainly the entire delay was unintentional.

Accordingly, Applicants hereby request that the requisite fee under 37 C.F.R. § 1.17(m) of \$1500.00 be waived, as the USPTO was responsible for the abandonment of this application. If not waived, please charge this fee, and any additional fee(s) that may be due, to Jones Day Deposit Acct. No. 503013.

Respectfully submitted,

Date: <u>April 11, 2007</u>	s/ Brent P. Ray	54,390
	Brent P. Ray	(Reg. No.)
	JONES DAY	
	222 East 41st Street	
	New York, New York 10017	
	(212) 326-3939	

Exhibits A-C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Angelucci et al.	Confirmation No.:	7696
Serial No.:	09/942,333	Art Unit:	3733
Filed:	August 29, 2001	Examiner:	Shaffer, Richard R.
For:	LAMINOPLASTY IMPLANTS AND METHODS OF USE	Attorney Docket No.:	8932-546

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision dated May 4, 2006 of the Primary Examiner finally rejecting claims 1, 3-24, and 26 of the above-identified application.

The item(s) checked below are appropriate:

1. An extension of time for responding to the final rejection for month(s):
 was filed on .
 is submitted herewith.
 2. A timely response to the final rejection has been filed.
 3. A fee in the amount of \$500.00 is:
 Required.
 Not required (Fee paid in prior appeal).
 4. Applicant has qualified for the 50% reduction in fee for an independent inventor, non-profit organization or small business concern and a fee in the amount of \$250.00 is:
 Required.
 Not required (Fee paid in prior appeal).
 5. Please charge the required fee, if any, to Jones Day Deposit Account No. 50-3013. A copy of this sheet is enclosed.

Respectfully submitted,

Date: April 11, 2007
s/ Brent P. Ray \$4,390

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